

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5086 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURESHCHANDRA AMRUTLAL VYAS

Versus

ACCOUNTANT GENERAL - II, GUJARAT STATE & ORS.

Appearance:

MR AM MITHANI for Petitioner

MR HL JANI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner was a Medical Officer, Class-II in Allopathic Hospital at Junagadh, Medical Department, Government of Gujarat. The petitioner submitted an application on 28th June 1983 for voluntary retirement from service. He sought voluntary retirement from 30th September 1983. So it was a notice for voluntary retirement. Under the

order dated 7th April 1984, the respondent allowed the petitioner to go on voluntary retirement with effect from 30th September 1983. The petitioner was allowed to cross Efficiency Bar in the pay scale of Rs.700-1300 with effect from 1.9.80 under the order dated 13th October 1982. It has been mentioned in the said order that with effect from 1st September 1981, the petitioner was entitled to draw increment and was entitled to draw the salary of Rs.1,020/-. The petitioner has gone on voluntary retirement from 30th September 1983 and as such, his subsequent increments have also fallen due on 1st September 1982 and 1st September 1983. Though the order has been passed for crossing Efficiency Bar, the petitioner was not given benefit of the same and the ground has been given that the order dated 13th October 1982 has been made by the Deputy Director of the Department who was not competent to pass the same. Increment can be released only on receipt of the order duly signed by the officer competent, i.e. the Director of Health and Medical Services. This reply has been given by the Accountant General (II), Rajkot. The petitioner was advised to approach the competent authority for correction of the order. The petitioner made a representation on 5th May 1983 through proper channel to the Director of Health and Medical Services, Gujarat State. The petitioner made application to the Accountant General, Gujarat State on 7th July 1983 and this time he has given reference to the Resolution of the Government dated 4th March 1983, under which powers to make order for crossing Efficiency Bar of the officer of the category to which the petitioner belonged has been delegated to the Deputy Director of Medical Services. The petitioner also sent a letter in this respect to the Director of the Department on 1st July 1983 and pointed out therein that the powers have been delegated to the Deputy Director also to allow the class of persons to which the petitioner belonged to cross Efficiency Bar. Thereafter again the petitioner sent a letter to the Director of Department dated 12th September 1983 in this respect, but nothing has been done. The petitioner then made a representation to the Director of the Department of 2nd January 1984 and prayed for release of his increment which had fallen due. The petitioner was then ultimately left with no option but to approach this Court by filing Special Civil Application on 31st July 1984. Rule has been issued and it was ordered to be finally heard in the month of September 1985. Reply has not been filed by the respondents and as such, the averments made in this Special Civil Application stand uncontroverted.

2. During the course of argument, the learned

counsel for the petitioner has filed a document, a letter sent by the Accounts Officer, Office of Accountant General-II, Rajkot, to The Director of Health Services (Medical), Ahmedabad. This letter has been written by the said officer in connection with this Special Civil Application. The Accountant General-II, is also a party to this petition. The learned counsel for the respondent, Shri H.L. Jani has also perused this document. A copy of this document has also been sent to the petitioner by the said officer. This document is taken on record with consent of parties. From this document, one thing which is clear that from 20th June 1983, the Deputy Director of the concerned Department had powers to pass order allowing to cross Efficiency Bar, to the category of persons to which the petitioner belonged. The order which has been made by the Dy. Director in the case of petitioner is dated 13th October 1982 which is not an order made by the competent officer. That officer has made suggestion that the order made by Dy. Director was required to be modified. A reference has been made to D.O. letter dated 21st December 1983 of the Deputy Secretary, Government of Gujarat, to Dy. Director, Health Services, as well as to the Director of Health Services. The officer has lastly concluded that a revised order allowing the petitioner to cross Efficiency Bar be made immediately. It has been made clear that the increment will be released to the petitioner only on receipt of EB orders from the Director.

3. The respondent has not come up with the case that the petitioner was not eligible to cross Efficiency Bar from the deemed date. It is also not case of respondents that the order dated 13th October 1982 has been passed by the Dy. Director for some extraneous considerations or it is a case of some procured order by the petitioner. When there is no dispute regarding entitlement of the petitioner to cross Efficiency Bar from 1.9.90, then it is highly arbitrary and unjustified on the part of the Director of the Department as well as on the part of State not to rectify the mistake by modifying that mistake by passing orders under the signature of the competent authority. It is also no more in issue that from 20th June 1983, Dy. Director of the Department was delegated with the powers of passing the order for crossing of Efficiency Bar of the officers of the category to which the petitioner belonged. For such petty matter, correspondence has been made in between the departments by the petitioner, but the respondent No.2, the concerned department and the State have not cared to see that this error is rectified. It was a case of rectification of the error which has to be done at the

end of the Department. It is a clear case of non application of mind which led the petitioner to file this petition. The present writ petition is an example to show how this Court is burdened with the petitions in which grievances of such nature could have been and should have been solved by the respondent-Department or State itself. The Accountant General, Rajkot, in the year 1984, has suggested the course to the Director of Health Services that the order dated 13th October 1982, made by Dy. Director be modified. Despite of this letter, nothing has been done by the Department and this matter remained pending for all these years. How casually the Department acted earlier to filing of this petitioner and still worse after filing of the petition can be seen from the fact that none of the respondents have filed reply to this Special Civil Application. So far as respondent No.1 is concerned, it has clearly intimated the petitioner and other respondents long back that unless the order signed by the appropriate authority allowing the petitioner to cross Efficiency Bar is received, it is not in a position to release the grade increment of the petitioner. So this authority is not at fault. Be that as it may.

4. At one stage, I thought of giving directions to respondent No.1 to release the grade increments of the petitioner which has fallen due on aforesaid dates, but on second thought, I thought that it would be proper and appropriate to give directions to respondent No.3 herein the Director of Health and Medical Services, to decide the matter afresh and pass order regarding crossing of Efficiency Bar by the petitioner in 1980, 1981 and 1983 within a period of three months from the date of receipt of certified copy of this order. It shall be open to respondent No.3 to go on the question whether the petitioner was eligible for crossing Efficiency Bar with effect from aforesaid dates or not. However, where the respondent No.3 tentatively considers that the petitioner is not eligible to cross Efficiency Bar with effect from aforesaid dates or any of dates above, the petitioner may be given an opportunity of hearing before making the order. In case the petitioner is allowed to cross Efficiency Bar with effect from dates aforesaid, then he will be entitled for all consequential benefits, i.e. the arrears of fixation as well as revision of pension, gratuity and other retirement benefits. The petitioner shall be entitled for interest on the amount of arrears of pay fixation as well as on arrears of fixation of his pension, gratuity and other retirement benefits from the due date, at the rate of 12% p.a. The petitioner has been unnecessarily dragged in litigation

by respondent No.3 for a cause which could have been decided on its own behalf and as such, exemplary costs has to be awarded in the present case. The respondent No.3 is directed to pay Rs.2,000/- by way of costs of this petition. The respondent No.3 is further directed to deposit Rs.1,000/out of this costs in the office of the Gujarat State Legal Advisory Board, Gujarat High Court, Ahmedabad, and Rs.1,000/- of the said amount in the Bar Council of Gujarat in the account of Advocates' Welfare Fund. This Special Civil Application is allowed and Rule is made absolute in aforesaid terms.

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(sunil)